UNITED STATES PATENT AND TRADEMARK OFFICE

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

———————

Ex parte ANDRES SANCHEZ

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Appeal 2009-003232
Application 09/407,174
Technology Center 2600

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Decided: September 2, 2009

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Before MAHSHID D. SAADAT, KARL D. EASTHOM, and
ELENI MANTIS MERCADER, *Administrative Patent Judges.*

EASTHOM, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant appeals under 35 U.S.C. § 134 from the non-final rejection of claims 1, 2, and 4-24, the only claims pending (App. Br. 5).[1] We have jurisdiction under 35 U.S.C. § 6(b).

We affirm-in-part.

Appellant's invention provides telephone numbers stored on a telephone. A user can create and access a private list associated with a personal secret access code entered by the user, and a public list accessible by all users. Use of the different lists is referenced as first and second modes of operation. (Abstract; Spec. 3:12-13, 8:18-21, 12:4-9). According to claim 1, the lists are related to incoming and outgoing calls.

Exemplary claim 1 follows:

1. A method for managing telephone data used with a telephone, comprising:

storing telephone data related to at least one of incoming and outgoing telephone calls in at least one of a public call and private call list, the public call list being accessible to any user during operation of the telephone; and

limiting a user's access to the public telephone data in the public call list, until such time as the user of the telephone inputs a personal secret access code, after which, the user has access to the public telephone data in the public call list and to private telephone data in the private call list of private telephone data that is associated with the inputted personal secret access code,

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[1] Appellant's Supplemental Appeal Brief (filed Oct. 11, 2007) ("App. Br.") and Reply Brief (filed May 5, 2008) ("Reply Br."), and the Examiner's Answer (mailed Mar. 3, 2008) ("Ans."), detail the respective positions of the parties and are referenced here.

wherein both the private call list and the public call list are stored in the telephone.

The Examiner relies on the following prior art references:

Sussman	US 5,483,586	Jan. 9, 1996
Austin	US 6,259,908 B1	July 10, 2001
		(filed Nov. 25, 1996)

The Examiner rejected:

Claims 1, 2, 4, 11, 12, 16, 18, 23, and 24 as anticipated under 35 U.S.C. § 102(b) by Sussman; and

Claims 5-10, 13-15, 17, and 19-22 as obvious under 35 U.S.C. § 103(a) based on Sussman and Austin.

ISSUES

Appellant's arguments (App. Br. 11-21) with respect to the anticipation rejection of claims 1, 2, 4, 11, 12, 16, 18, 23, and 24 assert the failure of Sussman to disclose the feature in independent claims 1, 11, 16 and 23 of storing telephone data related to at least one of incoming and outgoing calls, and a similar feature in dependent claim 24. Appellant's arguments present the following issues:

Did Appellant show that the Examiner erred in finding that Sussman discloses storing telephone data related to at least one of incoming and outgoing telephone calls in at least one of a public call and private call list as called for in claim 1?

Did Appellant show that the Examiner erred in finding that Sussman discloses a storage device which stores both the public and private type of data referred to in claim 1, as required by dependent claim 24?

Appellant's arguments (App. Br. 22-30) with respect to the obviousness rejection of claims 5-10, 13-15, 17, and 19-22 based on Sussman and Austin repeat certain limitations of claims 5-10, 13, and 19 and generally assert a failure by the Examiner to establish a prima facie case of obviousness. Appellant's arguments present the following issues:

Did Appellant demonstrate that the Examiner erred in finding that Sussman and Austin collectively teach: storing the data on a common list as called for in claim 5; providing two operating modes as called for in claim 6; blocking indication of calls as called for in claim 7; switching between two operating modes by manipulating keyboard commands as called for in claims 8 and 20; entering a sequence of commands as called for in claim 9; delaying the switching between modes until a user inputs the secret access code as called for in claim 10; and providing an inhibitor that prevents indication of an incoming private call when the telephone number of said incoming call is designated to be a private call corresponding to a personal secret access code that has not been inputted into said telephone by a current user of said telephone as called for in claim 13.[2]

FINDINGS OF FACT (FF)

Sussman

1. Sussman discloses a telephone directory data base system which is "effectively an electronically stored equivalent of a telephone book" maintained by a central service provider (col. 1, ll. 11-14). The firmware for the system (including the directory memories (*see* col. 7, ll. 32-33, 48-50, col. 8, ll. 51-54)) are "incorporated . . . as part of the telephone, or as an add-

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[2] Claims 17 and 19 present similar issues.

on device that integrates with the telephone" (col. 1, ll. 8-13). The user can enter the directory telephone and "tag" an entry for further description (i.e., "gives a great lunch") (col. 7, ll. 2-5). In general, the user can "enter, store, retrieve, edit and delete all of the user definable data in User Directory Memory 10" (col. 3, ll. 60-62). The user interacts with the telephone by use of a Keypad Unit 17, or, as an alternative, a speech recognition system (col. 5, ll. 23-27; Fig. 2).

2. A Central Telephone Directory Service Provider 1 downloads the directory data at various intervals via a CCTSN (Common Carrier Telecommunications Switching Network) 4 connected to different subscriber's 5, 8 telephones via accessing telephone circuitry 6 (col. 2, ll. 44-60, col. 3, ll. 62-66, col. 5, ll. 48-49; Figs. 1, 2). Besides the accessing telephone circuitry 6 (which interfaces with the CCTSN 4 wirelessly (*see* Figs. 1, 2)), the remaining telephone circuitry and device components include, *inter alia*, a CPU 12, Program Memory 11, Directory Memory 9, User Directory Memory 10, modem 13, Display Unit 16, Keypad Unit 17, microphone 19, and speaker 20 (col. 3, ll. 51-56).

3. A "user can create and maintain lists of commonly used subscriber telephone numbers names and addresses, as well as assigning a unique label to each list . . . . [T]he apparatus will dial the selected telephone number, or numbers" (col. 2, ll. 24-29). "The subscriber can direct the current invention to dial any number listed in the on-line directories 9 and 10 and to notify the user when the dialed party answers the phone" (col. 5, ll. 52-55). A user can create separate personal lists (i.e., "FAMILY," "FRIENDS") of "frequently called numbers" in the user's User Directory Memory 10 (also referred to as

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the "user's directory 10") by browsing the Directory Memory 9, selecting an entry, and adding it to the user's directory memory 10 (col. 6, ll. 40-51).

4. Sussman's telephone can be shared by multiple users in a household or business. As such, the telephone has "multiple personal user directories in User Directory Memory 10" with "the means to maintain secure access to each personal user directory . . . . achieved by means of a user identification code and password . . . . Prior to the entries being displayed in the user's personal directory, the user must enter his identification code and password." (Col. 7, ll. 6-19).

5. Directory Memory 9 and User Directory Memory 10 are linked by an index system to optimize memory usage so that user memory 10 need not store redundant telephone numbers and other information already stored in memory 9. On the other hand, information and numbers not stored in memory 9 can be stored and entered into the user memory 10 (col. 4, ll. 41-52).

Austin

6. Austin teaches call blocking for cellular telephones (col. 1, ll. 54-58).

7. Austin also teaches a subsidy lock code (SSDS) and/or a data configuration lock code (SSDC) to ensure that a cellular telephone activates on a subsidizing cellular service carrier instead of an unauthorized carrier (and to ensure that a unauthorized entity does not obtain inadvertent access to the cellular telephone data). The SSDC can be zeroed out with a keypad and is less secure than the SSDS. Manually setting the SSDC to zero (after a cellular carrier sets the SSDS code to zero) allows transfer of cellular services from one carrier to another. (Col. 7, ll. 20-66, col. 11, ll. 1-25). In

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other words, setting both codes to zero allows the telephone to be enabled for activation to any network (col. 11, ll. 6-11).

PRINCIPLES OF LAW

"[T]he examiner bears the initial burden, on review of the prior art or on any other ground, of presenting a *prima facie* case of unpatentability." *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992). Under § 102, Appellant may sustain this burden by showing that the prior art reference relied upon by the Examiner fails to disclose an element of the claim. "It is axiomatic that anticipation of a claim under § 102 can be found only if the prior art reference discloses every element of the claim." *See In re King*, 801 F.2d 1324, 1326 (Fed. Cir. 1986) (citing *Lindemann Maschinenfabrik GMBH v. Am. Hoist & Derrick Co.*, 730 F.2d 1452, 1457 (Fed. Cir. 1984)). "A reference anticipates a claim if it discloses the claimed invention 'such that a skilled artisan could take its teachings in combination with his own knowledge of the particular art and be in possession of the invention.'" *In re Graves*, 69 F.3d 1147, 1152 (Fed. Cir. 1995) (quoting *In re LeGrice*, 301 F.2d 929, 936 (CCPA 1962)) (emphasis omitted).

Under § 103, a holding of obviousness can be based on a showing that "there was an apparent reason to combine the known elements in the fashion claimed." *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007). Such a showing requires:

> "some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness" . . . . [H]owever, the analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ.

Id. (citation omitted).

If the Examiner makes such a showing, the burden then shifts to
Appellant to overcome the prima facie case with argument and/or evidence.
Obviousness is then determined on the basis of the evidence as a whole and
the relative persuasiveness of the arguments. *See Oetiker*, 977 F.2d at 1445.

"Construing claims broadly during prosecution is not unfair to the
applicant . . . because the applicant has the opportunity to amend the claims
to obtain more precise claim coverage." *In re Am. Acad. of Sci. Tech Ctr.*,
367 F.3d 1359, 1364 (Fed. Cir. 2004) (citation omitted).

ANALYSIS

ANTICIPATION

Appellant's argument (App. Br. 12) that

> while SUSSMAN discloses the user can direct the telephone to
> dial any number listed in directories 9 and 10, there is no
> arguable disclosure of storing telephone data related to at least
> one of incoming or outgoing calls in memory 9, which is
> provided solely to receive directory data from the service
> provider

lacks merit. Users can make telephone calls by accessing public telephone
data in the public call list of Directory Memory 9, as the Examiner found
(Ans. 3; FF 3). As such, data related to an outgoing call is stored in memory
9, contrary to Appellant's arguments.

Moreover, in addition to calls from Directory Memory 9, calls from
User Directory Memory 10 also meet the argued limitation. Appellant
acknowledges (App. Br. 12) that Sussman's "memory 10 is provided to store
a user's on-line personal telephone directories, and can include a list of
frequently used telephone numbers." Users can also tag entries in memory

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10 and otherwise edit related telephone data before or after an outgoing or incoming call (*see* FF 1). This editing also constitutes "storing telephone data related to at least one of incoming and outgoing telephone calls in at least one of a public call and private call list."

Accordingly, since the user "dial[s] any number listed in the on-line directories 9 and 10" or otherwise makes outgoing calls of "frequently called numbers" from either the public call list 9 and/or the private (edited) call list 10 (FF 3), Sussman teaches "storing telephone data related to at least one of incoming and outgoing telephone calls in at least one of a public call and private call list."

Appellant's response (Reply Br. 3) that "SUSSMAN does not even suggest that incoming or outgoing calls are stored, only that the user can call numbers stored in the memories" neither directly relates to any recited claim limitations, nor is not commensurate in scope with the claim. The claim does not recite storing of any calls. (Appellant agrees (*id.*) "that the pending claims at issue do not recite that 'the system somehow captures the data on an incoming or outgoing call'"). Accordingly, the response fails to demonstrate error.

Appellant's related response (Reply Br. 2-3) that Sussman only teaches storing numbers that "*may* be called (in memory 9) or . . . numbers *to be* called (memory 10)" also fails to demonstrate error. Appellant does not explain clearly how this argument relates to a claim limitation. While Appellant argues (Reply Br. 3) that the Examiner ignores "the recitation of *storing* telephone data related to at least one of incoming and outgoing calls," the Examiner's findings (Ans. 3) indicate that the related data in Sussman's telephone for such calls has already been stored, as discussed

supra. Moreover, Sussman teaches storing other related data, by tagging telephone entries and editing them before or after an incoming or outgoing call (FF 1), as also discussed *supra*.

Appellant further states (App. Br. 13) that Sussman does not teach or disclose "whether the on-line directory stored in memory 9 is accessible before entry of the appropriate identification code and password" or "a public call list being accessible to any user during operation of the telephone." Appellant also states (*id.*) that Susmman "does not even arguably disclose separate public and private call lists, as recited in at least independent claim 1." These mere denials and repetition of claim limitations fall short of an argument demonstrating error in the Examiner's findings. Sussman discloses separate lists in memory directories 9 and 10 as discussed *supra* (FF 1-5).[3] Sussman also teaches that the personal directory 10 is not displayed prior to entry of a "user identification code and password" (FF 4). This teaching implies that the separate public list in directory memory 9 is accessible prior to any code and password entry by any one of the possible multiple users, as the Examiner found (Ans. 6; *see* FF 4).

Appellant's arguments (App. Br. 13-20) concerning independent claims 11, 16, and 23 track the arguments presented for claim 1. Appellant's arguments and mere repetition of similar claim limitations fail to constitute separate arguments for patentability, and moreover fail to demonstrate error, for the reasons noted above.

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[3] These directory memories 9 and/or 10, edited using the telephone keypad entries, reside within a telephone (*see* FF 1-3), contrary to an untimely (i.e., waived) argument, which Appellant's attorney raised for the first time at oral argument.

Notwithstanding Appellant's mere denials with respect to claim 23 (App. Br. 18-20), which calls for a plurality of users and a respective private list for each one of the plurality, Sussman discloses use of a single telephone by multiple users each with access to the public list in User Directory 9, and each with a respective private list in User Directory Memory 10 and secret access code, as the Examiner found (*see* Ans. 6; FF 4). As such, Appellant's arguments fail to demonstrate that the Examiner erred in finding that Sussman anticipates claim 23.

Appellant's (App. Br. 20) assertion of "additional features that further define the invention over the art of record" does not constitute a separate argument for the patentability of dependent claims 2, 4, 12, and 18, which therefore fall with independent claims 1, 11, and 16.

With respect to claim 24, Appellant states (App. Br. 21) that Sussman "fail[s] to positively disclose, *inter alia*, the telephone includes a display, a keypad and *a storage device with stores both the public type and the private type of telephone data*, as recited in claim 24." In response, the Examiner (Ans. 6-7) points to the public 9 and private 10 memory directories as the pertaining to the recited storage device. Such linked directories in Sussman's telephone memory reasonably constitute such a storage device (FF 5; *see also supra* note 3). Appellant has also argued, as noted *supra* with respect to claim 1, that "SUSSMAN does not even arguably disclose separate public and private call lists" (App. Br. 13).

However, Appellant's argument implies that non-separate lists are common to a telephone storage device. In any case, the lists are linked and therefore, stored in a storage device, as such a storage device reasonably encompasses the memory of the telephone (*see* FF 2, 5). Appellant's

conflicting arguments and mere recitation of claim limitations coupled with a denial do not demonstrate error in the Examiner's findings with respect to claim 24.

"It is the applicant's burden to precisely define the invention, not the PTO's." *In re Morris*, 127 F.3d 1048, 1056 (Fed. Cir. 1997) ("The problem in this case is that the appellants failed to make their intended meaning explicitly clear."). Accordingly, we will sustain the Examiner's anticipation rejection of claims 1, 2, 4, 11, 12, 16, 18, 23, and 24 based on Sussman.

OBVIOUSNESS

With respect to claim 5, the Examiner found (Ans. 4) that combining data from one separate memory into a single memory "is known in the art as consolidating, and it is used to save memory space and increase efficiency in accessing data." Appellant does not address the Examiner's rationale, but merely repeats (App. Br. 26-27) the claim limitations and asserts that "no proper combination . . . can render unpatentable the invention recited in claim 5." The Examiner's rationale constitutes "'some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness'," *KSR*, 550 U.S. at 418 (citation omitted).

Sussman teaches that the two lists are linked and share common data in a single telephone (FF 2, 5). Similar to claim 24, Appellant has argued that "SUSSMAN does not even arguably disclose separate public and private call lists" (App. Br. 13). For reasons similar to those explained above with respect to claim 24, Appellant's conflicting arguments and failure to address the Examiner's rationale does not demonstrate Examiner error.

With respect to claim 6, Sussman provides a private list 10 accessible only by a user code and password, and a public list 9 (FF 4), as also noted *supra*. Therefore, the Examiner's rationale that claim 6 is "inherent in Sussman" (Ans. 4) constitutes "'some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness,'" *KSR*, 550 U.S. at 418 (citation omitted), which Appellant's mere denials and claim recitations (App. Br. 27) fail to rebut. That is, Sussman teaches "a first [public 9] mode that has no access restrictions, and a second [private 10] mode with access restrictions" as recited in claim 6. This mode interpretation is consistent with Appellant's disclosed public and private modes.[4]

With respect to claims 7 and 13, Austin teaches call blocking as the Examiner found (FF 6; Ans. 4). The Examiner reasoned that claims 7 and 13 "are nothing more than the notoriously old call blocking or call screening" (Ans. 4). Appellant merely repeats the limitations of claims 7 and 13 and asserts that the rejections are improper (App. Br. 27-29).

Claim 7 recites "blocking any indication of the incoming call, when a telephone number is designated as a protected telephone number." Using Austin's known blocking scheme in Sussman's telephone meets the claim limitations as the Examiner reasoned (Ans. 4), because a blocked number constitutes a protected number. Using such a known feature predictably would have benefited Sussman's similar telephone device and would have been obvious. As such, Appellant's denial (App. Br. 27-28) does not demonstrate Examiner error in the rejection of claim 7.

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[4] *See supra* "STATEMENT OF THE CASE," hereby designated as further findings of fact.

On the other hand, claim 13 recites

> an inhibitor that prevents at least one of a visual indication and an audible indication of an incoming call when a telephone number of said incoming call is designated to be a private call corresponding to a personal secret access code that has not been inputted into said telephone by a current user of said telephone.

These limitations are not apparent in the teachings of Sussman and Austin absent a clearer articulation by the Examiner as to how Austin's call blocking feature as combined with Sussman's telephone meets the recited limitations. As such, Appellant's contention (App. Br. 29) demonstrates Examiner error in the rejection of claim 13, and claims 14 and 15 dependent therefrom.

Claims 17 and 19 contain limitations similar to that of claim 13, but the Examiner does not provide a similar call blocking rationale for the former claims. Rather, the Examiner groups the explanation of claims 17 and 19 with that of claim 6, and asserts that the "first and second modes as taught by Austin into the Sussman device and method" would have rendered the invention obvious (Ans. 4). Appellant's arguments (App. Br. 29-30) therefore demonstrate Examiner error in the rejection of claims 17 and 19.

Claim 8 recites "switching between the two operating modes by manipulating a predetermined keyboard command." Claims 9 and 10 depend from claim 8 and respectively recite "manipulating one of a particular sequence of commands and a plurality of contemporary commands," and "delaying the switching between the two operating modes until the user inputs the personal secret access code." The Examiner asserts (Ans. 4) that the limitations are either inherent in Sussman or obvious over the combination of Sussman and Austin, with Austin teaching two operation

modes and a security lock code "to restrict use of the phone or not" (Ans. 7). (*See* FF 7).

Appellant acknowledges (App. Br. 24) that Austin teaches "a data configuration lock code that can also be utilized, preferably after the cellular phone has been activated." However, Appellant also asserts (*id.*) that "the two modes identified by AUSTIN relate to protecting phone data from cellular signal interceptors, not to users of the telephone" and concludes that "no proper combination of SUSSMAN in view of AUSTIN would have even arguable rendered obvious Appellant's invention, as recited in at least independent claims 1, 11, 16, and 23." Appellant (App. Br. 28-29) also repeats various limitations of claims 8-10 and asserts that the rejections thereof are improper without an explanation as to what is missing in the dependent claims.

As discussed *supra*, the Examiner found and the record supports, that either Sussman teaches two modes, private and public (FF 3, 4), or Austin teaches two modes (FF 7) (as Appellant acknowledges (App. Br. 24), as noted *supra*), rendering such modes inherent or obvious (Ans. 4, 7). Contrary to Appellant's argument (App. Br. 24), while Sussman does teach limiting access by "cellular signal interceptors" (App. Br. 24), Sussman also teaches limiting and allowing manual access by phone users via a keypad entry (whereby a user can zero out a required access code) (FF 7). As such, combining Austin's security feature with Sussman's to restrict device access to one or the other of two modes (though cumulative to Sussman's secured modes) would have been obvious, as the Examiner reasoned (Ans. 7).

Appellant does not particularly address, apart from a mere listing and denial, the remaining limitations of claims 8-10 discussed *supra*, for

example, the keyboard command limitation of claim 8, the sequence
limitation of claim 9, or the personal code entry limitation of claim 10. In
any case, as noted above and as implied by the Examiner's rejection (Ans. 3-
4, 6), Sussman discloses entry of codes and passwords to obtain access to a
personal directory 10 (FF 4).

Accessing Sussman's personal directory 10 and public directory 9
reasonably constitutes switching between operating modes, with Sussman's
code and password entry via the keyboard (FF 1, 3, 4), and/or Austin's
similar code entry and keyboard (FF 7), constituting at least a suggestion of
"manipulating a predetermined keyboard command" as recited in claim 8, "a
particular sequence of [such] commands" as recited in claim 9, and
"switching between the two operating modes until the user inputs the
personal secret access code," as recited in claim 10.

Claim 20 recites limitations similar to claim 8. Claims 21 and22
recite limitations similar to those in claims 9 and 10, but Appellant does not
individually address claims 21-22. While Appellant generally asserts a lack
of an articulated rationale with respect to claims 6, 8-10, 14, 15, 17, and 19-
22 as noted *supra* (App. Br. 24), such a generalized and grouped argument
does not constitute an argument for patentability nor demonstrate error in the
Examiner's reasonable findings that Sussman (with or without Austin)
teaches the recited limitations of claims 21 and 22, as outlined above with
respect to similar claims 8-9 and 10.

Manipulating keyboard commands for a predetermined time to initiate
an operation to enter the secret access code, as claim 21 requires, or
similarly manipulating a predetermined sequence of simultaneous
commands, as claim 22 requires, in light of Sussman's teachings of entering

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a keyboard code and password (or Austin's similar teachings), would have been implicit or obvious, as the Examiner found. Such codes take time - a predetermined amount of time - to either enter and/or process. Simultaneous commands reasonably correspond to powering the telephone with one on/off command with a subsequent (i.e., simultaneous) entry of further password and/or code commands. Appellant has not presented evidence or argument to show that such a modification, or even a more advanced simultaneous entry of more than one command after such power-up, would have been "uniquely challenging or difficult for one of ordinary skill in the art" or would have "represented an unobvious step over the prior art." *Leapfrog Enters., Inc. v. Fisher-Price, Inc.*, 485 F.3d 1157, 1162 (Fed. Cir. 2007).

Therefore, we will also sustain the Examiner's rejection of claims 8-10 and 20-22.

CONCLUSION

Appellant did not show that the Examiner erred in finding that Sussman discloses storing telephone data related to at least one of incoming and outgoing telephone calls in at least one of a public call and private call list as called for in claim 1.

Appellant did not show that the Examiner erred in finding that Sussman discloses a storage device which stores both the public and private type of data referred to in claim 1, as required by dependent claim 24.

Appellant did not show that the Examiner erred in finding that Sussman and Austin collectively teach: storing the data on a common list as called for in claim 5; providing two operating modes as called for in claim 6; blocking calls as called for in claim 7; switching between modes by

manipulating keyboard commands as called for in claims 8 and 20; entering a sequence of commands as called for in claim 9; and delaying switching between modes until a user inputs the secret access code as called for in claim 10.

Appellant did show that the Examiner erred in finding that Sussman and Austin collectively teach providing an inhibitor preventing indication of an incoming private call when the telephone number of said incoming call is designated to be a private call corresponding to a personal secret access code that has not been inputted into said telephone by a current user of said telephone as called for in claim 13.

DECISION

We affirm the Examiner's decision rejecting claims 1, 2, 4-12, 16, 18, and 20-24. We reverse the Examiner's rejection of claims 13-15, 17, and 19.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED-IN-PART

babc

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